

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SCOTT W. McDONALD,

Plaintiff,

v.

STATE OF WASHINGTON, JEREMY K.
WESTPHAL and AMANDA WESTPHAL,
husband and wife,

Defendants.

NO. CV-12-5032-EFS

SCOTT W. McDONALD,

Plaintiff,

v.

CHRISTIE LAWLER; JOE GUNTER; GARY
FORD; ANDREW SAWYER; RICHARD
MORGAN; ELDON VAIL; JAMES
THATCHER; TANA SOUTHERLAND AND
DOES 1 THROUGH 100,

Defendants.

NO. CV-12-5089-EFS

Plaintiff Scott W. McDonald filed two civil lawsuits in this District pertaining to events on June 29, 2009, at the Coyote Ridge Correctional Facility. Mr. McDonald seeks to consolidate these two lawsuits for pretrial and trial, proceeding in CV-12-5089-EFS. CV-12-5032, ECF No. [34](#). Defendants do not oppose Mr. McDonald's consolidation request. In addition, on October 22, 2012, the parties filed a Stipulation, CV-12-5032-EFS: ECF No. [43](#), wherein they agreed:

- 1) Mr. McDonald will voluntarily dismiss all claims against Jeremy and Amanda Westphal in No. CV-12-5032-EFS with prejudice and with no award of costs or fees to any party;
- 2) Mr. McDonald will promptly file a Second Amended Complaint in CV-12-5089-EFS that names only the following individuals as Defendants: Christie Lawler, Joe Gunter, Gary Ford, Andrew Sawyer, Richard Morgan (aka Dick Morgan), Eldon Vail, James Thatcher, and Tana Southerland;
- 3) once the Second Amended Complaint is filed by Mr. McDonald in CV-12-5089-EFS, defense counsel is authorized and will promptly accept service of the Second Amended Complaint on behalf of all the individually-named Defendants therein, with the sole exception of James Thatcher; and
- 4) the Stipulation does not operate as a waiver of any procedural and/or substantive defenses available to any of the currently named or prospective Defendants in CV-12-5032-EFS or CV-12-5089-EFS.

The Court finds good cause to accept the parties' Stipulation. Pursuant to Federal Rule of Civil Procedure 41(a)(1), the Court dismisses Mr. McDonald's claims against the Westphals in CV-12-5032-EFS; and pursuant to Federal Rule of Civil Procedure 42, the Court consolidates these two civil lawsuits into CV-12-5089-EFS as they arise from the same common nucleus of operative facts and Mr. McDonald is pursuing negligence and civil rights theories in both lawsuits. And the Court accepts the Second Amended Complaint, ECF No. [5](#), filed by Mr. McDonald in CV-12-5089-EFS on October 22, 2012.

1 There are two pending defense summary-judgment motions in CV-12-
2 5032-EFS: Defendants' Motion for Summary Judgment on State Law Negligence
3 Claims, ECF No. [16](#), and Defendants' Motion for Summary Judgment on
4 Plaintiff's 42 U.S.C. § 1983 Claims, ECF No. [19](#). Because these motions
5 are filed in the case that will be "closed" upon consolidation, the Court
6 strikes these motions. However, if Defendants wish for these motions to
7 be heard in CV-12-5089-EFS on the presently-set date of November 15,
8 2012, without oral argument, they are to file no later than October 29,
9 2012, in CV-12-5089-EFS 1) a notice, advising of their intent to pursue
10 the motions as scheduled and indicating how the motions are impacted by
11 the Second Amended Complaint, if at all, and 2) the previously-filed
12 moving papers. If Defendants do so, Mr. McDonald shall promptly re-file
13 his opposition papers).

14 Accordingly, **IT IS HEREBY ORDERED:**

- 15 1. The Unopposed Motion to Consolidate With CV-12-5089-EFS, **ECF**
16 **No. [34](#)**, and related Motion to Expedite, **ECF No. [38](#)**, are
17 **GRANTED**.
- 18 2. Mr. McDonald's claims against Jeremy and Amanda Westphal in CV-
19 12-5032 are **DISMISSED** with prejudice and with no award of costs
20 or fees to any party.
- 21 3. CV-12-5032-EFS is **CONSOLIDATED** into CV-12-5089-EFS for pretrial
22 and trial purposes.
- 23 4. Mr. McDonald's Second Amended Complaint, CV-12-5089-EFS: ECF
24 No. [5](#), is **ACCEPTED**.
- 25 5. If Defendants wish to pursue the summary-judgment motions as
26 scheduled, they are to file in CV-12-5089-EFS the above-

1 required notice and the moving papers no later than **October 29,**
2 **2012.**

3 6. CV-12-5032-EFS is **CLOSED**, and all pending dates, motions, and
4 deadlines in that lawsuit are **STRICKEN**.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
6 Order and provide copies to counsel.

7 **DATED** this 24th day of October 2012.

8
9 s/Edward F. Shea
EDWARD F. SHEA
10 Senior United States District Judge

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